

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOBBY CHARLES GENTRY,

Petitioner,

v.

Case No. 5:06-CV-106

PEOPLE OF THE STATE OF
MICHIGAN, et al.,

HON. GORDON J. QUIST

Respondents.

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it Petitioner's Objections to the report and recommendation dated July 31, 2006, in which Magistrate Judge Brenneman recommended that Petitioner's habeas petition be summarily dismissed pursuant to Rule 4 because the petition does not raise a meritorious federal claim. The magistrate judge further recommended that a certificate of appealability be denied. After conducting a de novo review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

The magistrate judge concluded that Petitioner failed to raise a meritorious constitutional claim because both of his claims involve the sentencing court's scoring and enhancement under the state sentencing guidelines, which does not give rise to a constitutional claim. The Court has reviewed Petitioner's Objections and notes that he fails to explain why his claims present a constitutional claim. In other words, Petitioner has failed to provide any reason why this Court should not adopt the report and recommendation.

Under 28 U.S.C. § 2253(c)(2), the Court must also determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a

“substantial showing of a denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The Sixth Circuit has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). Rather, the district court must “engage in a reasoned assessment of each claim” to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595 (2000). *Murphy*, 263 F.3d at 467. Consequently, this Court has examined Petitioner’s claims under the *Slack* standard.

Under *Slack*, 529 U.S. at 484, 120 S. Ct. at 1604, to warrant a grant of the certificate, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” For the reasons stated above, the Court finds that reasonable jurists could not find that this Court’s dismissal of Petitioner’s claim was debatable or wrong. Thus, the Court will deny Petitioner a certificate of appealability. Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued July 31, 2006 (docket no. 3) is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Petitioner’s habeas corpus petition is **DISMISSED WITH PREJUDICE** pursuant to Rule 4 because Petitioner does not raise a meritorious federal claim.

IT IS FURTHER ORDERED that a **certificate of appealability** is **DENIED** by this Court.

This case is **concluded**.

Dated: September 14, 2006

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE